

FILED

APR 19 2021

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

Clerk, U.S. District Court
Texas Eastern

Morinville

Case Number : 4:20cv980

vs.

Overwatch Digital Health, Inc., et al

PLAINTIFF’S SUR REPLY TO MOTION TO DISMISS

Plaintiff, Paul Morinville, submits this sur-reply to the Reply Of Defendants’ To Plaintiff’s Response (“Defendants’ Reply”) filed by counsel to Clive Barrett, Emmanuel Correia, and Rision Limited’s (collectively the “Defendants”). Rather than addressing Plaintiff’s allegations in the Defendants’ Reply, the Defendants choose instead to engage in ad hominem attacks and to mischaracterize and confuse the underlying facts of this case in an apparent effort to mislead this Court.

The bulk of the Defendants Reply argues that I have failed to state any plausible basis for asserting claims against the Defendants. The Defendants’ arguments are wrong. As I have alleged multiple times in pleadings, the Defendants unilaterally and without authority took actions to affirmatively prevent the reverse takeover (“RTO”) from being consummated. Whether these actions are rooted in fraud, intentional misrepresentation, misappropriation of intellectual property, civil conspiracy, breach of fiduciary duty, duty of care or breach of duty of good faith and fair dealing or some other tort, the gravamen of my complaint is that Defendants – collectively and individually and in their capacity as members of the board of directors, or in their personal capacity – engaged in behaviors that caused damage to me.

Defendants also attempt to shield the unethical and unscrupulous actions of Messrs. Barrett and Correia and to preclude this Court's scrutiny of their activities under the pretense that they were exercising their "valid business judgment." However, under the business judgment rule, board members are presumed to act in "good faith" when they adhere to fiduciary standards of loyalty, prudence and care including, the duty of care and the duty of loyalty. These duties obligate board members to act on an informed basis and to put the interests of the corporation over their own self-interest or the interests of others.

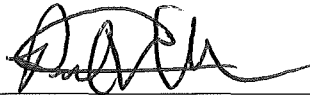
As alleged in my previous pleadings, Messrs. Barrett and Correia – acting in concert with Rision, Limited – unilaterally decided to terminate the RTO and to abscond with certain products developed by me that were, in part, based on an ocular biomarker platform developed by BioEye, Ltd. ("BioEye"). These products are called Eympair (drug detection), Eympact (concussion detection) and Overwatch IDT (inflammation detection technology used to track the progression of sepsis). In a shocking violation of the duty of candor owed to this Court, counsel for Defendants' fail to note in Defendants' Reply that Messrs. Barrett and Correia (as well as several other business partners of Messrs. Barrett and Correia) have a significant equity ownership interest in BioEye, Ltd. By preventing the RTO from being consummated and then alleging that Eympair, Eympact and Overwatch IDT are owned solely by BioEye, it is clear that Messrs. Barrett and Correia engaged in gross breaches of (at least) the duty of care and duty of loyalty owed to the Overwatch/BioEye entity and to its investors. In addition, by putting their own self-interest (as equity holders in BioEye) above the interests of the Overwatch/BioEye entity and the investors in Overwatch, Messrs. Barrett and Correia relinquished any claim that their actions are safeguarded from this Court's scrutiny by the business judgment rule.

Defendants' Reply also makes the argument that the boilerplate legal disclaimer language found in the July 2020 Investor Presentation is somehow indicative that the Overwatch/BioEye entity had never been actually formed but was going to be consummated in the future upon the closing of the RTO. Putting aside for a moment that legal disclaimers and boilerplate language about forward looking statements, etc. is standard fare in marketing materials presented to prospective investors and is indicative of absolutely nothing, what is telling is that Defendants' Reply is silent about the January 2020 organizational chart appended as Exhibit C to Plaintiff's Response. That chart clearly shows that all individuals that were formerly employed by either Overwatch or BioEye (prior to these entities being merged as Overwatch/BioEye) and all business endeavors being undertaken by those entities were – as of at least January 2020 – now part of a unified organization all under the direction of one Chief Executive Officer – Terry Fokas. That fact is buttressed by a March 2020 update letter sent to existing investors which is attached as Exhibit A (the "Investor Update Letter"). The Investor Update Letter repeatedly references products developed by one unified entity, talks about actions taken by the unified entity (not by two separate entities) to reduce costs through reductions in force, and is attempting to raise operational funds for the continued development of multiple products (including, Eympair and Eym pact). Regardless of how much Defendants' protest and argue, and regardless of whether the Overwatch/BioEye entity is categorized as a merged entity or as a partnership, the simple fact is that employees, existing investors, and management acted, looked at and treated Overwatch/BioEye as one unified entity. As did Messrs. Barrett and Correia until they apparently decided it was in their best personal interests to terminate the RTO and claim that BioEye was never part of Overwatch in order to abscond with Eympair, Eym pact and Overwatch IDT.

Finally, I object to Defendants' proposal that if the Court denies Defendants' Motion to Dismiss that this action be bifurcated for an expedited summary judgment process. The issues in this case are extremely fact-intensive and require me to develop a record based on documents and correspondence that are outside my control. In addition, many of the witnesses that will offer testimony on key issues are located overseas in several different countries and across multiple time-zones. I respectfully request the Court adhere to the current pre-trial and discovery schedule to avoid being prejudiced in my discovery endeavors. In addition, Defendants' argument that an expedited schedule would lead to fast and efficient adjudication are wholly undercut by the current schedule that contemplates a trial on the merits in less than just 12 months.

13APR2021 _____

Date

A handwritten signature in black ink, appearing to read 'Paul Morinville', written over a horizontal line.

Paul Morinville
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(512) 294-9563
Paul@Morinville.net

CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2021, the forgoing document was served on the following parties by U.S.P.S. first class mail, postage prepaid and email on the following parties:

Overwatch Digital Health, Inc.
17440 Dallas Parkway
Suite 230
Dallas, TX 75287
Email: terry.fokas@overwatchdh.com

Lenard M. Parkins
R.J. Shannon
Pennzoil Place
700 Milam Street, Suite 1300
Houston, TX 77002
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rshannon@parkinslee.com

Date: 13APR2021 _____

A handwritten signature in black ink, appearing to read "Paul Morinville", is written over a horizontal line.

Paul Morinville
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EXHIBIT A

Strictly Confidential Information – Not For General Distribution

OVERWATCH DIGITAL HEALTH, INC.

“Independence Matters, Peace of Mind Matters, Innovation Matters”™

March 27, 2020

Dear Convertible Note and Promissory Note Holders,

As you are no doubt aware, we are in the midst of a global pandemic caused by the coronavirus. In addition to the effects this pandemic has had on everyone personally, the coronavirus has resulted in unprecedented disruptions to the global investment markets. I am writing to you today to give you an update on how these disruptions have affected Overwatch's business operations and funding efforts. Please note that the information contained in this letter is strictly confidential and should not be distributed or forwarded to anyone beyond the intended recipient.

Overwatch Funding

Since its inception in February 2019, Overwatch has raised approximately US \$___ million through sales of convertible and promissory notes. The intended use of these funds was to build out our epilepsy monitoring and alerting application (the “Overwatch App”) and to implement machine learning and artificial intelligence training algorithms to enhance accuracy. In addition, these funds were to be used to pay development costs for the Eymcompact App (concussion detection application) and the Eymcompact App (drug-detection application) which are based on technology created by BioEye, Ltd. (as noted in my previous correspondence, Overwatch entered into an agreement in September 2019 to acquire Israel-based BioEye).

As a result of your investment in Overwatch, I am pleased to inform you that we completed development and training of the Overwatch App with the latest version of this product showing a remarkable seizure detection accuracy rate of 95-96% and a false positive rate of approximately 1%. The Overwatch App will be released to the public on the Apple App Store and through our website (www.overwatchdh.com) on Monday, March 30th. The Eymcompact and Eymcompact Apps require just a few more weeks of development effort in order to have products ready for commercial launch to the public.

To finish development efforts and to ramp up marketing activities to generate meaningful revenues from our products, we had planned to raise in April AU \$_ million - \$_ million through the sale of common shares on the Australian Securities Exchange (“ASX”) pursuant to a reverse takeover transaction with Rision, Ltd. Unfortunately, due to the coronavirus's disruption of the global investment markets, our plans to raise funds through the ASX have had to be put on hold for the foreseeable future.

Expense Reduction Initiatives

In response to the current uncertain funding environment, we undertook significant steps to reduce monthly operational costs. In Israel, we terminated all employees with the exception of our chief scientist and senior software engineer and closed our office. In the United States, we terminated all contract and long-term developers and engineers with the exception of our chief technology officer and one off-shore contract software engineer. We also delayed development of the Eymcompact and Eymcompact Apps in order to eliminate all development and sales and marketing expenses associated with those products. Finally, all of our remaining personnel agreed to accept significant cuts in compensation resulting in a 30% reduction in

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employee salaries. As a result of these initiatives, Overwatch has reduced its operational costs and expenses to less than US \$_____ per month.

Funding Support Request

In order to keep our current (reduced) operations intact, Overwatch requires at least US \$_____ from its existing convertible noteholders and promissory noteholders and other interested parties. This money will allow us to pay operational costs and expenses for the next four months ($\$/month \times 4 \text{ months} = \$$ _____). The terms and conditions of this funding will be the same as the convertible notes that you acquired in 2019 and the requested minimum investment amount is US \$_____.

As of the date of this letter, Overwatch has secured commitments of US \$_____ contingent upon us successfully raising the remainder of our \$_____ funding requirement. We are also exploring whether additional financial support can be obtained from the U.S. coronavirus stimulus spending bill which is anticipated to be signed into law this week. In addition to these encouraging developments, we are exploring funding opportunities from unaffiliated individual and institutional investors to raise the remainder of our short-term funding needs.

Continuing operations for the next four months will give Overwatch the opportunity to:

- Commercially launch the Overwatch App next week and expand our subscriber base (currently, _____ accounts have been opened for the Overwatch App) and increase revenues from monthly patient and doctor subscriptions as well as allow us to source additional funding opportunities;
- Give us a chance to recommence discussions and negotiations with a major professional _____ sports league to initiate field testing of the Eym pact App for sideline concussion detection screening; and
- Finalize the clinical trial protocol and master services agreement for the immediate commencement of an independent clinical trial of the Overwatch App with _____ (“_____”), the largest neurology practice group in _____. The clinical trial protocol and master services agreement have been substantially finalized and the clinical trial will commence when Overwatch has secured this additional funding.

These initiatives should give Overwatch the best chance of maintaining or enhancing its value during these uncertain times and place us in the best position to continue to attract funding. Finally, and although no one can predict what the future will bring, we believe that securing this funding to continue operations for the immediate future will give the global investment markets an opportunity to stabilize so that Overwatch can recommence efforts to secure a public listing and raise long-term funding through the ASX or through a public securities exchange in the United States.

We have incredible products that will have a positive impact on the medical and law enforcement communities and a dedicated and committed group of employees. I strongly believe that with this additional funding, we will get past this difficult period and that investors will see a very good return on their investment. I hope that you will continue to support us. If you would like to participate in this funding, please contact your broker/investment advisor or me at _____ by not later than Friday, April 3rd.

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Should you have any questions regarding Overwatch's business operations or this funding support request please do not hesitate to contact me at the email noted above or at _____.

Sincerely,

OVERWATCH DIGITAL HEALTH, INC.

Terry Fokas

Terry Fokas
Chief Executive Officer

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